Executive Summary – Enforcement Matter – Case No. 41224 Hunt County RN105947139 Docket No. 2011-0319-MSW-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

MSW

Small Business:

No

Location(s) Where Violation(s) Occurred:

Precinct Barn 2, 2020 Gilmer Street, Caddo Mills, Hunt County

Type of Operation:

County maintenance facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: September 23, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$10,000

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0 Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$10,000

Name of SEP: Caddo Lake Watershed Enhanced Monitoring Program

Compliance History Classifications:

Person/CN - Average

Site/RN - Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41224 Hunt County RN105947139 Docket No. 2011-0319-MSW-E

Investigation Information

Complaint Date(s): May 13, 2010

Complaint Information: Alleged that barrels of used oil were buried at the Facility.

Date(s) of Investigation: January 24, 2011

Date(s) of NOE(s): February 18, 2011

Violation Information

Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") [30 Tex. Admin. Code § 330.15(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Immediately, cease allowing disposal of any additional MSW at the Facility;
- b. Within 30 days, remove all MSW from the Facility and dispose of it at an authorized facility;
- c. Within 180 days, submit an Affected Property Assessment Report to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program which may include: plans, reports, and notices under Subchapter E; financial assurance; and Institutional Controls under Subchapter F; and
- d. Within 195 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: N/A Date Answer(s) Filed: N/A SOAH Referral Date: N/A Hearing Date(s): N/A

Settlement Date: N/A

Executive Summary – Enforcement Matter – Case No. 41224 Hunt County RN105947139 Docket No. 2011-0319-MSW-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division,

MC 219, (512) 239-3565

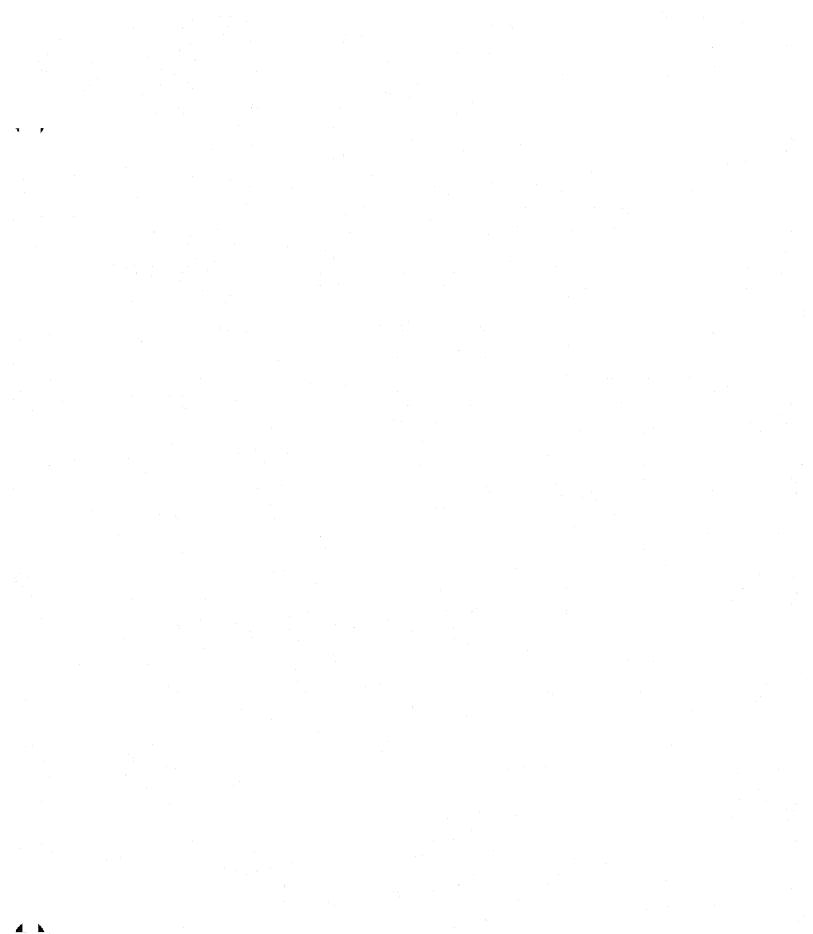
Respondent: Jay Atkins, Commissioner, Hunt County, P.O. Box 1097, Greenville,

Texas 75403

Daniel W. Ray, County Civil Attorney, Hunt County, P.O. Box 1353, Greenville, Texas

75403-1353

Respondent's Attorney: N/A



Attachment A Docket Number: 2011-0319-MSW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Hunt County

Penalty Amount: Ten Thousand Dollars (\$10,000)

SEP Offset Amount: Ten Thousand Dollars (\$10,000)

Type of SEP: Pre-approved

Third-Party Recipient: Caddo Lake Institute

Caddo Lake Watershed Enhanced Monitoring

Project Name: Program

Location of SEP: Harrison, Marion, Wood, Upshur, Morris, Camp,

Titus, Franklin, and Hopkins Counties

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP offset amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

a. <u>Project</u>

Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Caddo Lake Institute (CLI) for the *Caddo Lake Watershed Enhanced Monitoring Program* to be used as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, SEP funds will be used for increased water quality monitoring and contaminant sampling for use in evaluating risks to water in Caddo Lake and other water bodies in the Cypress Creek basin, comprising the Caddo Lake watershed. This project will supplement and enhance existing monitoring and contaminant sampling within the Cypress Creek basin. Depending upon the amount of funding available, SEP funds may be used to increase the frequency of samples taken and analyzed from existing monitoring sites, expand the types of monitoring done for existing sites, fund monitoring at other locations, or fund other types of environmental sampling for contaminants that enter waters of the State.

All monitoring paid for with SEP funds will be conducted under a TCEQ-approved Quality Assurance Project Plan (QAPP). Analysis of all data collected will comply with state laws and rules regarding use of certified or accredited testing laboratories (e.g., 30

Texas Administrative Code, Chapter 25, relating to Environmental Testing Laboratory Accreditation and Certification, as amended). Additionally, the data will be posted on the following website: http://www.caddolakeinstitute.us/. This SEP will be administered in accordance with federal, state, and local environmental laws and regulations.

Respondent certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

b. Environmental Benefit

The Caddo Lake wetland ecosystem is a large, shallow, wetland complex located at the bottom of the Cypress Creek watershed in Texas and Louisiana. Composed of one of the largest remaining cypress-tupelo communities in the region, these wetlands exhibit high biodiversity of plants and animals and are an important sports fishery and waterfowl/songbird migratory habitat that is a key link in flyways stretching from South America to the Arctic. The environmental benefit of the project is to provide essential data on pollutants in this critical watershed.

c. <u>Minimum Expenditure</u>

Respondent shall contribute at least the SEP offset amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP offset amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Caddo Lake Institute 44 East Avenue, Suite 100 Austin, TX 78701

3. Records and Reporting

Concurrent with the payment of the SEP offset amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP offset amount to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

> Texas Commission on Environmental Quality Enforcement Division Attention: SEP Coordinator, MC 219 PO Box 13087 Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP offset amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP offset amount.

In the event of incomplete performance, Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall mail it to:

Texas Commission on Environmental Quality Litigation Division Attention: SEP Coordinator, MC 175 PO Box 13087 Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent must include a clear statement that the Project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW) Policy Revision 2 (September 2002) PCW Revision October 30, 2008 Assigned 22-Feb-2011 PCW 28-Feb-2011 Screening 28-Feb-2011 **EPA Due** RESPONDENT/FACILITY INFORMATION Respondent Hunt County Reg. Ent. Ref. No. RN105947139 Major/Minor Source Minor Facility/Site Region 4-Dallas/Fort Worth CASE INFORMATION No. of Violations 1 Enf./Case ID No. 41224 Docket No. 2011-0319-MSW-E Order Type Findings Government/Non-Profit Yes Media Program(s) Municipal Solid Waste Enf. Coordinator Cara Windle Multi-Media EC's Team Enforcement Team 6 Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000 Penalty Calculation Section \$10,000 TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 ADJUSTMENTS (+/-) TO SUBTOTAL 1 Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage. \$0 **Compliance History** 0.0% Enhancement Subtotals 2, 3, & 7 No adjustment for compliance history. Notes \$0 Subtotal 4 0.0% Enhancement **Culpability** No The Respondent does not meet the culpability criteria. Notes Good Faith Effort to Comply Total Adjustments Subtotal 5 \$0 \$0 0.0% Enhancement* Subtotal 6 **Economic Benefit** *Capped at the Total EB \$ Amount Total EB Amounts \$3,415 Approx. Cost of Compliance \$10,000 Final Subtotal SUM OF SUBTOTALS 1-7 \$0 0.0% OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment Reduces or enhances the Final Subtotal by the indicated percentage Notes \$10,000 Final Penalty Amount \$10,000 STATUTORY LIMIT ADJUSTMENT

No deferral is recommended for Findings Orders.

0.0%

Reduction

Adjustment

DEFERRAL

Reduces the Final Assessed Penalty by the indicted percentage.

Notes

PAYABLE PENALTY

\$0

\$10,000

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Screening Date 28-Feb-2011

Respondent Hunt County Case ID No. 41224

Reg. Ent. Reference No. RN105947139

Media [Statute] Municipal Solid Waste

Enf. Coordinator Cara Windle

Compliance History Worksheet
>> Compliance History Site Enhancement (Subtotal 2)

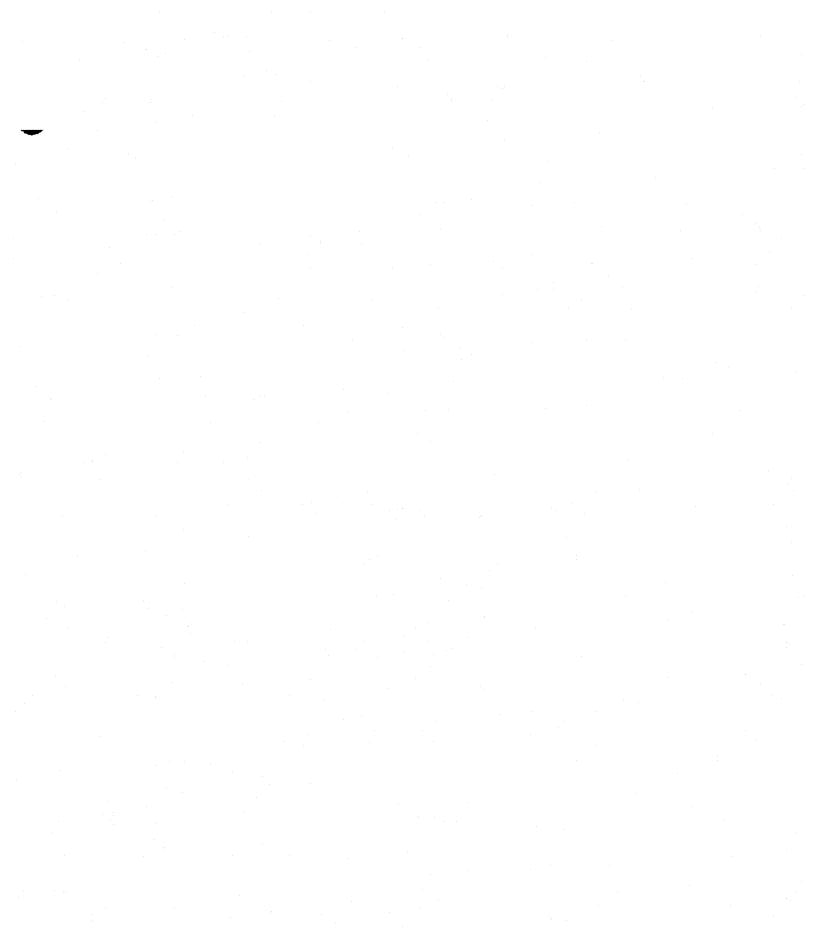
Component	Number of	Enter Number Here	Adjust.		
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%		
	Other written NOVs	0	0%		
and the second s	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)				
Orders	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	n	0%		
Judgments	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%		
and Consent Decrees	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%		
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%		
Emissions	Chronic excessive emissions events (number of events)	0	0%		
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%		
Audits	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%		
	Ple	ease Enter Yes or No			
	Environmental management systems in place for one year or more	No	0%		
Other	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%		
Other	Participation in a voluntary pollution reduction program	No	0%		
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%		
Localisa de la constitución de l	Adjustment Per	centage (Sub	total 2)		
	Aujustinent Fei	centage (Sub	iotai z) L		
Repeat Violator	(Subtotal 3)				
No	Adjustment Per	centage (Subt	total 3)		
Compliance Hist	ory Person Classification (Subtotal 7)				
Average P	erformer Adjustment Per	centage (Subi	total 7) 🗌		
Compliance Hist	ory Summary				
Compliance History Notes	No adjustment for compliance history.				
			3 e 31 [
	Total Adjustment Percentage (S	subtotais 2, .	3, Q /) L		

Screening Date		PCW
Respondent Case ID No.		n 2 (September 2002) sion October 30, 2008
Reg. Ent. Reference No.		3.071 October 337 2000
Media [Statute]	Municipal Solid Waste	
Enf. Coordinator Violation Number	Cara Windle	
		111
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c)	
Violation Description	Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, the Respondent allowed burial of MSW at the Facility including miscellaneous trash, debris, and various sizes of poly drums and buckets empty or containing automotive grease, fluids, used oil, diesel engine filters, and charred wood. Analyses of soil samples from the area indicated the concentrations of lead [(26 milligrams per kilogram ("mg/kg")], arsenic (34 mg/kg), and barium (5,200 mg/kg)] exceeded the Texas-Specific Soil Background Concentration levels of 15 mg/kg, 5.9 mg/kg, and 300 mg/kg respectively.	NANOMIC ANTIGOTOMIC CONTROL CO
	Base Penalty	\$10,000
>> Environmental, Proper	ty and Human Health Matrix	
	Harm	
Release OR Actual	Major Moderate Minor x	
Potential	Percent 50%	
>>Programmatic Matrix		
Falsification	Major Moderate Minor	
	Percent 0%	
Iliuman haalb	h or the environment has been exposed to pollutants which exceed levels that are	
333333333333333333	tive of human health or environmental receptors as a result of the violation.	* Acceptance
		0.000
	Adjustment \$5,000	mm.mm
· ·		\$5,000
Violation Events		000000000
Violation Events		
Number of V	fiolation Events 2 35 Number of violation days	
	daily	
	weekly	
mark only one	monthly x quarterly Violation Base Penalty	\$10,000
with an x	semiannual [1]	
	annual single event	
Two month	ly events are recommended based on documentation of the violation during the	
Jan 1980	inuary 24, 2011 investigation to the February 28, 2011 screening date.	in territories
Good Faith Efforts to Comp	O.0% Reduction	\$0
Good Faith Lijoris to com	Before NOV NOV to EDPRP/Settlement Offer	
	Extraordinary	RESAMANT
	Ordinary (mark with x)	Kullerspann
	The Respondent does not meet the good faith criteria for	
	Notes this violation.	
	Violation Subtotal	\$10,000
Economic Benefit (EB) for		
	ed EB Amount \$3,415 Violation Final Penalty Total	\$10,000
	This violation Final Assessed Penalty (adjusted for limits)	\$10,000

	E	conomic	Benefit	Wo	rksheet		
Respondent	Hunt County			********			
Case ID No.	•						
Reg. Ent. Reference No.		ı					
							Years of
	Municipal Solid	i waste				Percent Interest	Depreciation
Violation No.	1			440180184440			Garant Felderstander der der er
						5.0	15
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commar or ¢	*					
rem vescripuon	no commas or a						
Delayed Costs	[Y		1 0.00	T #0	<u>*0</u>	\$0
Equipment		<u> </u>		0.00	\$0 \$0	\$0 \$0	\$0 \$0
Buildings	***************************************			0.00	\$0 \$0	\$0 \$0	\$0 \$0
Other (as needed)			_	0.00	\$0 \$0	\$0	\$0
Engineering/construction		 		0.00	\$0 \$0	n/a	\$0 \$0
Land	***************************************	ļ		0.00	\$0 \$0	n/a	\$0
Record Keeping System		 		0.00	<u> </u>	n/a	\$0
Training/Sampling	\$80,000	24-Jan-2011	29-Oct-2011	0.76	\$3,036	n/a	\$3,036
Remediation/Disposal Permit Costs	200,000	24-3011-2011	<u> </u>	0.00	\$0 \$0	n/a	\$0
Other (as needed)	\$10,000	24-Jan-2011	29 Oct 2011	0.76	\$379	n/a	\$379
Notes for DELAYED costs	environment	al investigation ar	nd submit an Al	fected	Property Assessm	cility (\$80,000) and ent Report (\$10,000 stimated date of cor)). The Dates
Avoided Costs	ANNUAL	IZE [1] avoided	costs before	enterii	ng item (except	for one-time avoid	led costs)
Disposal	r	ir i		0.00	\$0	\$0	\$0
Personnel	***************************************			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$Q	\$0
Notes for AVOIDED costs							
Approx. Cost of Compliance		\$90,000			TOTAL		\$3,415

Compliance History

Customer/Respondent/Owner-Operator:	CN601266299	Hunt County	Classifica	ation: AVERAGE	Rating: 3.01			
Regulated Entity:	RN105947139	Precinct Barn 2	Classific BY DEF	ation: AVERAGE AULT	Site Rating: 3.01			
ID Number(s):								
Location:	2020 GILMER ST	, CADDO MILLS, TX, 7513	5					
TCEQ Region:	REGION 04 - DF	W METROPLEX						
Date Compliance History Prepared:	February 28, 201	1						
Agency Decision Requiring Compliance History:	Enforcement			·				
Compliance Period:	February 28, 2006	February 28, 2006 to February 28, 2011						
TCEQ Staff Member to Contact for Additional Info		nis Compliance History one: (512) 239-2581		·				
	Site C	ompliance History Com	ponents					
1. Has the site been in existence and/or operation	-		Yes					
2. Has there been a (known) change in ownership.	operator of the site	during the compliance perio	d? No					
3. If Yes, who is the current owner/operator?			N/A					
4. If Yes, who was/were the prior owner(s)/opera	tor(s)?		N/A					
5. When did the change(s) in owner or operator of	occur?		N/A	·				
6. Rating Date: 9/1/2010 Repeat Violator:	NO							
Components (Multimedia) for the Site : A. Final Enforcement Orders, court judgm N/A	ents, and consent d	ecrees of the State of Texas	and the federal governme	nt.				
B. Any criminal convictions of the state of N/A	Texas and the feder	al government.						
C. Chronic excessive emissions events.								
N/A								
D. The approval dates of investigations. (0		lo.)						
1 02/18/2011 (8939)		,						
E. Written notices of violations (NOV). (CC N/A	JEDS INV. Track. NO).)						
F. Environmental audits. N/A								
G. Type of environmental management sy N/A	rstems (EMSs).							
H. Voluntary on-site compliance assessme	ent dates							
N/A	on dates.							
Participation in a voluntary pollution rec	duction program.							
N/A	, , ,							
J. Early compliance.								
N/A								
Sites Outside of Texas								
N/A								



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



8	BEFORE THE
§	
§	TEXAS COMMISSION ON
§	
§	ENVIRONMENTAL QUALITY
	* * * * * *

AGREED ORDER DOCKET NO. 2011-0319-MSW-E

At its	agenda, the Texas Comm	ission on l	Environm	ental Qua	lity
("the Commission" or "T	CEQ") considered this agreement	t of the	parties,	resolving	an
enforcement action regardi	ing Hunt County ("the Responden	t") under	the auth	ority of T	EX.
HEALTH & SAFETY CODE ch	. 361 and TEX. WATER CODE ch. 7.	The Exe	cutive Di	irector of	the
TCEQ, through the Enforce:	ment Division, and the Respondent	presented	this agre	eement to	the
Commission.	•	-			

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a county maintenance facility at 2020 Gilmer Street in Caddo Mills, Hunt County, Texas (the "Facility").

- 2. The Facility involves or involved the management of municipal solid waste ("MSW") as defined in Tex. Health & Safety Code ch. 361.
- 3. During an investigation on January 24, 2011, TCEQ staff documented burial of MSW at the Facility including miscellaneous trash, debris, and various sizes of poly drums and buckets empty or containing automotive grease, fluids, used oil, diesel engine filters, and charred wood. Analyses of soil samples from the area indicated the concentrations of lead [(26 milligrams per kilogram ("mg/kg")], arsenic (34 mg/kg), and barium (5,200 mg/kg)] exceeded the Texas-Specific Soil Background Concentration levels of 15 mg/kg, 5.9 mg/kg, and 300 mg/kg respectively.
- 4. The Respondent received notice of the violations on February 25, 2011.

II. CONCLUSIONS OF LAW

- 1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to Tex. Health & Safety Code ch. 361 and Tex. Water Code ch. 7 and the rules of the Commission.
- 2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent the unauthorized disposal of MSW, in violation of 30 Tex. Admin. Code § 330.15(c).
- 3. Pursuant to Tex. Water Code § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
- 4. An administrative penalty in the amount of Ten Thousand Dollars (\$10,000) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in Tex. Water Code § 7.053. Ten Thousand Dollars (\$10,000) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Ten Thousand Dollars (\$10,000) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty

Hunt County DOCKET NO. 2011-0319-MSW-E Page 3

payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Hunt County, Docket No. 2011-0319-MSW-E" to:

Financial Administration Division, Revenues Section Attention: Cashier's Office, MC 214 Texas Commission on Environmental Quality P.O. Box 13088 Austin, Texas 78711-3088

- 2. The Respondent shall implement and complete a SEP in accordance with Tex. Water Code § 7.067. As set forth in Section II, Paragraph 4, Ten Thousand Dollars (\$10,000) of the assessed administrative penalty shall be offset with the condition that the Respondent implements the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
- 3. The Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease allowing disposal of any additional MSW at the Facility;
 - b. Within 30 days after the effective date of this Agreed Order, remove all MSW from the Facility and dispose of it at an authorized facility;
 - c. Within 180 days after the effective date of this Agreed Order, submit an Affected Property Assessment Report, pursuant to 30 Tex. Admin. Code § 350.91, to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 Tex. Admin. Code ch. 350 which may include: plans, reports, and notices under Subchapter E (30 Tex. Admin. Code §§ 350.92 to 350.96); financial assurance (30 Tex. Admin. Code § 350.33(1)); and Institutional Controls under Subchapter F; and
 - d. Within 195 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false

Hunt County DOCKET NO. 2011-0319-MSW-E Page 4

information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team Enforcement Division, MC 149A Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087

with a copy to:

Waste Section Manager Dallas/Fort Worth Regional Office Texas Commission on Environmental Quality 2309 Gravel Drive Fort Worth, Texas 76118-6951

- 4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
- 6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
- 7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

- 8. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
- 9. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
- This Agreed Order may be executed in separate and multiple counterparts, which 10. together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
- 11. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 Tex. Admin. Code § 70.10(b) and Tex. Gov't Code § 2001.142.

Hunt County DOCKET NO. 2011-0319-MSW-E Page 6

For the Commission

SIGNATURE PAGE

I, the undersigned, have read and understand the attached Agreed Order in the matter of Hunt County. I am authorized to agree to the attached Agreed Order on behalf of Hunt County, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

accepting payment for the penalty amount, is materially relying on such representation.
I understand that by entering into this Agreed Order, Hunt County waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.
I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in: A negative impact on compliance history; Greater scrutiny of any permit applications submitted; Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency; Increased penalties in any future enforcement actions; Automatic referral to the Attorney General's Office of any future enforcement actions; and TCEQ seeking other relief as authorized by law. In addition, any falsification of any compliance documents may result in criminal prosecution. Signature Date
Signature Date
Daviec w. Ray Name (Printed or typed) Authorized Representative of Hunt County Date CUVNTY GUIL ATTORNEY Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.

Attachment A Docket Number: 2011-0319-MSW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Hunt County

Penalty Amount: Ten Thousand Dollars (\$10,000)

SEP Offset Amount: Ten Thousand Dollars (\$10,000)

Type of SEP: Pre-approved

Third-Party Recipient: Caddo Lake Institute

Caddo Lake Watershed Enhanced Monitoring

Project Name: Program

Location of SEP: Harrison, Marion, Wood, Upshur, Morris, Camp,

Titus, Franklin, and Hopkins Counties

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP offset amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

a. Project

Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Caddo Lake Institute (CLI) for the *Caddo Lake Watershed Enhanced Monitoring Program* to be used as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, SEP funds will be used for increased water quality monitoring and contaminant sampling for use in evaluating risks to water in Caddo Lake and other water bodies in the Cypress Creek basin, comprising the Caddo Lake watershed. This project will supplement and enhance existing monitoring and contaminant sampling within the Cypress Creek basin. Depending upon the amount of funding available, SEP funds may be used to increase the frequency of samples taken and analyzed from existing monitoring sites, expand the types of monitoring done for existing sites, fund monitoring at other locations, or fund other types of environmental sampling for contaminants that enter waters of the State.

All monitoring paid for with SEP funds will be conducted under a TCEQ-approved Quality Assurance Project Plan (QAPP). Analysis of all data collected will comply with state laws and rules regarding use of certified or accredited testing laboratories (e.g., 30

Texas Administrative Code, Chapter 25, relating to Environmental Testing Laboratory Accreditation and Certification, as amended). Additionally, the data will be posted on the following website: http://www.caddolakeinstitute.us/. This SEP will be administered in accordance with federal, state, and local environmental laws and regulations.

Respondent certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

b. <u>Environmental Benefit</u>

The Caddo Lake wetland ecosystem is a large, shallow, wetland complex located at the bottom of the Cypress Creek watershed in Texas and Louisiana. Composed of one of the largest remaining cypress-tupelo communities in the region, these wetlands exhibit high biodiversity of plants and animals and are an important sports fishery and waterfowl/songbird migratory habitat that is a key link in flyways stretching from South America to the Arctic. The environmental benefit of the project is to provide essential data on pollutants in this critical watershed.

c. <u>Minimum Expenditure</u>

Respondent shall contribute at least the SEP offset amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP offset amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

> Caddo Lake Institute 44 East Avenue, Suite 100 Austin, TX 78701

3. Records and Reporting

Concurrent with the payment of the SEP offset amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP offset amount to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

> Texas Commission on Environmental Quality Enforcement Division Attention: SEP Coordinator, MC 219 PO Box 13087 Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP offset amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP offset amount.

In the event of incomplete performance, Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall mail it to:

Texas Commission on Environmental Quality Litigation Division Attention: SEP Coordinator, MC 175 PO Box 13087 Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent must include a clear statement that the Project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.